

IN THE UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MICHAEL FAVATA,
ET AL ,
Plaintiffs

VS.

NATIONAL OILWELL VARCO, LP.,
aka / fka BRANDT NOV
Defendant

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CIVIL ACTION NO. 2:12-CV-00082
Jury Trial

PLAINTIFFS' FIRST AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME, Michael Favata, Jerry Jurach, Jack Akin, Zack Hunter, and Michael Mallett individually, and on behalf of similarly situated present and former employees, hereinafter referred to as "Plaintiffs" complaining of NATIONAL OILWELL VARCO, LP., aka/fka BRANDT NOV and would show unto the Court the following:

PARTIES

1. Plaintiffs are individuals who reside in the State of Texas. All Plaintiffs were classified as and worked as 'Closed Loop' employees aka 'sit hands' and 'service' employees which identifies the classes of all similarly situated present and former employees. Attached to this document as Exhibit "A" are opt in consent forms for the named Plaintiffs
2. Defendant NATIONAL OILWELL VARCO, LP., aka / fka BRANDT NOV is a business entity doing business in Nueces County, Texas. A waiver of citation has been forwarded to Defendant to its registered agent:

C T CORPORTION SYSTEM
350 n. St. Paul, Ste. 2900
Dallas, Tx. 75201-4234

VENUE AND JURISDICTION

3. Venue is proper in Nueces County, Texas, and this district in that all or a substantial part of the events or omissions giving rise to this cause of action occurred in Nueces County, Texas. Moreover, venue is proper in Nueces County, Texas, in that Defendant conducts business in that County.
4. This Court has jurisdiction pursuant to 28 U.S.C. section 1331.

MISNOMER/MISIDENTIFICATION

5. In the event any parties are misnamed or are not included herein, it is Plaintiff's contention that such was a "misidentification," "misnomer" and/or such parties are/were "alter egos" of parties named herein. Alternatively, Plaintiff contends that such "corporate veils" should be pierced to hold such parties properly included in the interest of justice.

RESPONDEAT SUPERIOR

6. Employees involved in this cause of action were, at all times described herein, employees and vice-principals of defendant(s) and were at all times acting in the course and scope of that employment. Accordingly, defendant(s) are liable for such conduct under the doctrine of *Respondeat Superior*.

FACTUAL BACKGROUND

7. At all times relevant to this lawsuit, Defendant, its agents and employees, were aware of the acts and omissions alleged herein, and through its authorized employees, agents, officers, executives, or representatives, knowingly formulated, participated in, and/or approved the wrongful and illegal conduct complained of herein.
8. Plaintiffs are former employees of Defendant(s). All Plaintiffs were classified as and worked as 'Closed Loop' employees aka 'sit hands' and 'service' employees which identifies the classes of all similarly situated present and former employees.
9. 'Closed Loop' employees aka 'Sit hands' were required to travel to oil rig locations throughout Texas to install, operate, maintain, and rig down Defendants' products and equipment. The equipment filtered cuttings, rocks and solid materials from drilling fluids while the oil rig was operating.
10. 'Service' employees were required to travel to oil rig locations throughout Texas to service, work on and repair Defendants' products and equipment.
11. Plaintiffs and other unnamed present and/or former employees of Defendant(s) were required to work in excess of 40 hours per week but were not paid overtime as required by law. The Defendant(s) failure to pay overtime violated the Fair Labor Standards Act (FLSA). Therefore, Plaintiffs and said present and/or former employees are entitled to recover pay for each hour worked in excess of 40 hours during any one work week at the rate of one and one half times his hourly rate.
12. Plaintiffs would show the following classes of nonpayment of overtime wages:

1. Not paid for mandatory safety meetings before each shift each day worked;
2. Not paid for all hours on job locations;
3. Not paid full travel time to and from job locations;
4. Not paid bonuses;
5. Failure to pay FLSA wages when due.

13. Further Plaintiff would show that the FLSA violations were willful, continuous, and intended to mislead Plaintiffs, including telling Plaintiffs that they were not entitled to overtime and that they could not get overtime for all hours worked, even though it was a violation of law. Upon information and belief, Defendants paid supervisors bonuses based upon limiting the reported overtime hours of employees. Therefore, the acts were intentional and made knowingly and Plaintiffs are entitled to three years of accrued, unpaid overtime pay.
14. Plaintiff Mallett, was employed as a Closed Loop employee aka Sit Hand and promoted to a Closed Loop field supervisor during his employment. While employed as a Closed Loop field supervisor, Plaintiff Mallett engaged in activity "protected under the FLSA". Thereafter, Defendant demoted / removed Plaintiff as a Closed Loop field supervisor and constructively terminated Plaintiff Mallett on or about October 2011. Plaintiff Mallett suffered lost wages, past and future, and mental anguish and emotional distress damages and Liquidated damages as provided under 215(a)(3)
15. Plaintiffs are entitled to liquidated damages in an amount equal to the overtime benefits due because of the willful nature of the Defendants' failure to take reasonable steps to comply with the FLSA.

ATTORNEYS' FEES

16. It was necessary for Plaintiffs to retain the services of the undersigned attorneys to prosecute this action. Plaintiffs are entitled to recover the reasonable and necessary attorneys fees, expert fees and court costs to prosecute this action.

JURY DEMAND

15. Plaintiffs demand a trial by jury to the extent necessary under the law.

CONCLUSION

WHEREFORE, Plaintiffs pray that Defendant(s) be cited to appear and answer herein and that upon final hearing hereof, a judgment be rendered for Plaintiffs and against Defendants, for the damages set out above in the amount the jury deems reasonable under the circumstances, along with attorneys' fees, costs of court, pre-judgment interest, post-judgment interest and for such other and further relief to which Plaintiffs may show themselves justly entitled.

Respectfully Submitted,

By: 

Adam Poncio

Southern District No. 194847

State Bar No. 16109800

PONCIO LAW OFFICES

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State Bar #13686525

2842 Lawnview

Corpus Christi, Tx. 78404

Tel: (361) 882-5747

Fax: (361) 882-8926

ATTACHMENT 'A'

OPT-IN CONSENT FORM

Class Action: . National Oilwell Varco, Inc. / Brandt NOV, et al.

Name: JACK AKIN

S.S.# (optional) [REDACTED]

Address: [REDACTED]

Work Phone: [REDACTED]

Home Phone: [REDACTED]

Email: [REDACTED]

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to Fair Labor Standards Act

29 U.S.C. §216(b)

1. I consent and agree to pursue my claims arising out of overtime work as an employee or former employee of *National Oilwell Varco, Inc. aka Brandt NOV, et al.* in connection with the above referenced lawsuit.
2. I have worked in the position(s) listed above from on or about 19 OCT 2011 (month, year) to on or about month (year).
3. During the above time period, I worked in excess of forty (40) hours per week, but was not paid all my overtime compensation.
4. I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, et. seq. I hereby consent, agree and opt-in to become a Plaintiff herein and be bound to any judgment by the Court or any settlement of this action.
5. I hereby designate The Poncio Law Offices, P.C., Adam Poncio, and Attorney Chris McJunkin to represent me for all purposes in this action.
6. I also designate the collective action Representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation, entering into settlement agreements, the entering of an agreement with Plaintiffs' Counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

(Signature) [Signature]

(Date Signed) 3-9-12

****NOTE****

Statute of limitations concerns mandate that you return this form as soon as possible to preserve your rights.

OPT-IN CONSENT FORM

Michael Favata v. National Oilwell Varco, Inc. / Brandt NOV, et al.

Name: MICHAEL FAVATA S.S.# (optional) [REDACTED]
Address: [REDACTED] Work Phone: [REDACTED]
[REDACTED] Home Phone: [REDACTED]
Email: [REDACTED]

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to Fair Labor Standards Act

29 U.S.C. §216(b)

1. I consent and agree to pursue my claims arising out of overtime work as an employee or former employee of *National Oilwell Varco, Inc. aka Brandt NOV, et al.* in connection with the above referenced lawsuit.
2. I have worked in the position(s) listed above from on or about 1/2011 (month, year) to on or about LATE 2011 (month, year).
3. During the above time period, I worked in excess of forty (40) hours per week, but was not paid overtime compensation.
4. I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, et. seq. I hereby consent, agree and opt-in to become a Plaintiff herein and be bound to any judgment by the Court or any settlement of this action.
5. I hereby designate The Poncio Law Offices, P.C., Adam Poncio, and Attorney Chris McJunkin to represent me for all purposes in this action.
6. I also designate the collective action Representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation, entering into settlement agreements, the entering of an agreement with Plaintiffs' Counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

(Signature) Michael Favata

(Date Signed) Jan, 30th, Mon.

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OPT-IN CONSENT FORM

National Oilwell Varco, Inc. / Brandt NOV, et al

Name: Zack Hunter S.S.# (optional) _____
Address: _____ Work Phone: _____
_____ Home Phone: _____
_____ Email: _____

CONSENT TO JOIN COLLECTIVE ACTION Pursuant to Fair Labor Standards Act 29 U.S.C. '216(h)

1. I consent and agree to pursue my claims arising out of overtime work as an employee or former employee of *National Oilwell Varco, Inc. aka Brandt NOV, et al* in connection with the above referenced lawsuit.
2. I have worked in the position(s) listed above from on or about JANUARY 2011 (month, year) to on or about JUNE 2011 (month, year).
3. During the above time period, I worked in excess of forty (40) hours per week, but was not paid overtime compensation.
4. I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. '201, et. seq. I hereby consent, agree and opt-in to become a Plaintiff herein and be bound to any judgment by the Court or any settlement of this action.
5. I hereby designate The Poncio Law Offices, P.C., Adam Poncio, and Attorney Chris McJunkin to represent me for all purposes in this action.
6. I also designate the collective action Representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation, entering into settlement agreements, the entering of an agreement with Plaintiffs' Counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

(Signature) Zack Hunter (Date Signed) 3/14/12

****NOTE****

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OPT-IN CONSENT FORM
COLLECTION ACTION against National Oilwell Varco, Inc. aka Brandt NOV, et al,

Name: JERRY JURACH

S.S.# (optional) [REDACTED]

Address: [REDACTED]

Work Phone: [REDACTED]

Home Phone: [REDACTED]

Email: [REDACTED]

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to Fair Labor Standards Act

29 U.S.C. §216(b)

1. I consent and agree to pursue my claims arising out of overtime work as an employee or former employee of against National Oilwell Varco, Inc. aka Brandt NOV, et al, in connection with the above referenced lawsuit.
2. I have worked in the position(s) listed above from on or about Feb 2011 (month, year) to on or about Mar 2011 (month, year).
3. During the above time period, I worked in excess of forty (40) hours per week, but was not paid overtime compensation.
4. I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, et. seq. I hereby consent, agree and opt-in to become a Plaintiff herein and be bound to any judgment by the Court or any settlement of this action.
5. I hereby designate The Poncio Law Offices, P.C., Adam Poncio, and Attorney Chris McJunkin to represent me for all purposes in this action.
6. I also designate the collective action Representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation, entering into settlement agreements, the entering of an agreement with Plaintiffs' Counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

(Signature) [Signature]

(Date Signed) 2/4/12

****NOTE****

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OPT-IN CONSENT FORM

Class Action: National Oilwell Varco, Inc. / Brandt NOV, et al.

Name: MICHAEL MALLET

S.S.# (optional) _____

Address: _____

Work Phone: _____

Home Phone: _____

Email: [REDACTED]

CONSENT TO JOIN COLLECTIVE ACTION

**Pursuant to Fair Labor Standards Act
29 U.S.C. §216(b)**

1. I consent and agree to pursue my claims arising out of overtime work as an employee or former employee of *National Oilwell Varco, Inc. aka Brandt NOV, et al.* in connection with the above referenced lawsuit.
2. I have worked in the position(s) listed above from on or about June 2009 (month, year) to on or about Oct 2011 (month, year).
3. During the above time period, I worked in excess of forty (40) hours per week, but was not paid all my overtime compensation.
4. I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, et. seq. I hereby consent, agree and opt-in to become a Plaintiff herein and be bound to any judgment by the Court or any settlement of this action.
5. I hereby designate The Poncio Law Offices, P.C., Adam Poncio, and Attorney Chris McJunkin to represent me for all purposes in this action.
6. I also designate the collective action Representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation, entering into settlement agreements, the entering of an agreement with Plaintiffs' Counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

(Signature) Michael Mallett

(Date Signed) 3/23/12

****NOTE****

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